THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.16768 of 2007

Date : 30-11-2007

Between :

J.Madhavaiah, S/o.Giddaiah.

.. Petitioner

And

The Revenue Divisional Officer, Kurnool and others.

..

Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.16768 of 2007

ORDER:

This Court issued *Rule nisi* on 07.08.2007. In W.P.M.P.Nos.21385 and 21384 of 2007, the following order was made on 28.08.2007:

> "The learned Government Pleader seeks further time for filing counter.
>
> Post after two weeks.
>
> In the meanwhile, the selections if any pursuant to the impugned order, dated 24.07.2007 may go on, but the same shall not be finalized"

2. Sri K.Rama Mohan Mahadeva, the learned Counsel representing the petitioner had taken this Court through the contents of the affidavit filed in support of the writ petition and would maintain that respondent No.3 failed to see that respondent No.1 selected candidates for 41 shops in the entire revenue division and except the present one in question and the authorizations had been issued to the selected candidates. Thus, the action on the part of respondent No.1 is illegal, unjust and arbitrary. Further the Counsel would contend that respondent No.2 instead of examining on merits, passed the impugned order cancelling the entire selection in respect of the fair price shop in question and hence the said action cannot be sustained. Further the Counsel also pointed out that there is no ambiguity in the selection process. The Counsel also pointed out that respondent No.3 being the revisional authority in fact, exceeded the powers in adjudicating the issue before him in cancelling the entire selection proceedings relating to the fair price shop in question.

3. The learned Government Pleader for Civil Supplies had taken this Court through the contents of counter affidavit and would submit that the writ petitioner is a non-resident and he does not satisfy the eligibility criteria. Even otherwise, in the light of the facts and circumstances, discretion was exercised properly by respondent No.3 and the same cannot be found fault.

4. Sri K.Rathangapani Reddy, the learned Counsel representing respondent No.4 would maintain that respondent No.4 had not challenged these proceedings, but however, the writ petitioner is a non-resident of the village. The learned Counsel also placed material before this Court to show that the petitioner is not a resident of the said village.

5. Heard the learned counsel.

6. The Writ Petition is filed with a prayer to issue a writ, order or a direction, more particularly one in the nature of Writ of *Certiorari* calling for all the connected records including the impugned proceedings of respondent No.3 in Rc.No.CS.3/47/2007, dated 24.07.2007 and quash the same as illegal, improper, unjust, arbitrary and contrary to law and further declare the proceedings of respondent No.2 in Rc.No.CS/3/192/2004 dated 03.01.2007 as illegal, improper, unjust and arbitrary and direct the respondent Nos.1 to 3 to appoint the petitioner as F.P. shop dealer of T.Gkulapadu village of Krishnagiri Mandal, Kurnool District and to pass any other suitable directions.

7. It is averred in the writ petition that the petitioner studied B.A., B.Ed. and is an unemployed person. It is stated that respondent No.1 issued a notification calling applications from the eligible candidates to fill up the vacancy fair price shop dealer of T.Gokulapadu village in the year 2004.

It is further stated that as per the notification, the petitioner and others applied for the same and respondent No.1 called for interview held on 15.06.2004 at Kurnool. It is stated that the petitioner got selected in the interview and a list of selected candidates has been published by respondent No.1 on the notice board on 18.06.2004 and respondent No.1 informed that appointment of authorization order will be issued in due course.

8. It is stated that while the matter stood thus, respondent No.1 issued appointment order to respondent No.4 in proceedings Rc.B.492/2004, dated 24.06.2004. Questioning the said appointment order, the petitioner preferred an appeal to respondent No.2 and respondent No.2 after perusing the material on record issued an interim order suspending the appointment order issued in favour of respondent No.4 as fair price shop dealer of T.Gokulapadu village. It is stated that later on respondent No.1 issued an authorization appointing the petitioner as fair price dealer and directed him to deposit Rs.3,000/- towards authorization and he has been issued the stocks from that day onwards and he has been distributing the essential commodities to the cardholders and respondent No.2 finally allowed his appeal in proceedings Rc.CS3/1912/2004, dated 05.10.2004 setting aside the appointment order issued in favour of respondent No.4.

9. Further it is stated that respondent No.4 filed revision before respondent No.3 questioning the orders of respondent No.2, dated 05.10.2004 and respondent No.3 without examining the matter and without issuing any notice to the petitioner, allowed the revision filed by respondent No.4 in proceedings Rc.CS3/192/2004, dated 04.11.2004. Questioning the said order, the petitioner filed W.P.No.21118 of 2004 before this Court and this Court after hearing all the parties including respondent No.4, disposed of the said writ petition directing respondent No.2 to

issue notice of hearing to the petitioner as well as respondent No.4 and directed to dispose of the appeal as early as possible, not later than four weeks from the date of receipt of the order, till the final orders are passed the existing arrangements shall be continued and as on the date of the orders of this Court, he has been continuing as fair price dealer.

10. Further it is stated that respondent No.8 issued impugned proceedings in Rc.CS.3/192/2004, dated 03.01.2007 wherein he upheld the orders of respondent No.1 in appointing respondent No.4 as F.P. Shop dealer dated 24.06.2004. Aggrieved by the orders of respondent No.2, the petitioner preferred revision to respondent No.3 on 17.01.2007 along with stay application requesting respondent No.3 to grant stay pending revision. Respondent No.3 did not consider in disposing of the stay application or the main revision. The petitioner approached this Court by filing W.P.No.1927 of 2007 and this Court dismissed the same on 05.02.2007 directing respondent No.3 to dispose of the application for interim relief expeditiously and preferably within a period of four weeks from the date of receipt of the copy of the order. This Court further observed that the main revision as well as the interim relief petition shall be disposed of by the Revisional Authority on merits in accordance with law within the specified time. The writ petition is dismissed with the above observations. Though the judgment was rendered on 05.02.2007, respondent No.3 received the said judgment on 15.02.2007, but no action has been taken within time stipulated by this Court. At that stage, the petitioner got issued a legal notice to respondent No.3 on 15.05.2007 calling upon him to comply with the orders passed by this Court. After more than two months, respondent No.3 passed the present impugned order.

11. It is averred in the counter-affidavit filed by the respondent Nos.1 to 3 that it is a fact that respondent No.1 issued a notification in Rc.B.492/2004 inviting applications for the appointment of Fair Price Shop dealership of T.Gokulapadu village, Krishnagiri Mandal on permanent basis. Interviews were conducted on 15.06.2004 and the petitioner was selected tentatively among the candidates who have attended. It is also averted that it is also a fact that the selected candidates list was published on the notice board on 18.06.2004. Later on, after publication of the list, it was noticed that the petitioner is not residing in T.Gokulapadu Village but residing in Veldurthy village, which is against the conditions of appointment. Since the candidate should be resident of the Gram Panchayat in which the shop is located as detailed in condition 8 of G.O.Ms.No.53 Consumer Affairs, Food and Civil Supplies (CS.I) Department dated 06.10.2003, hence, the petitioner's candidature was not considered for appointment as F.P. Shop Dealer. On verification of the Electoral Roll, his name is found in the Election List in P.S.No.10 of Veldurthy Village and Mandal.

12. Further it is stated that it is a fact that respondent No.2, on the appeal filed by the petitioner, granted stay on the orders of respondent No.1 till the appeal was finalized. It is a fact that respondent No.2 while disposing of the appeal set aside the orders of respondent No.1 with a direction to appoint the petitioner as fair price shop dealer for T.Gokulapadu village. As per the orders of respondent No.2, respondent No.1 appointed the petitioner as fair price shop dealer by his proceedings Rc.B.492/2004, dated 12.10.2004.

13. It is also stated that aggrieved by the order of

respondent No.2, respondent No.4 filed revision before respondent No.3. In the revision, respondent No.3 opined that since respondent No.4 had not received any notice and principles of natural justice were not followed, set aside the orders of respondent No.2 and remanded back the case to follow the due procedure and for taking necessary action as per law and rules in force. Meanwhile, the petitioner filed W.P.No.21118 of 2004 before this Court seeking his appointment as fair price shop dealer. This Court pending further orders has suspended the orders of respondent No.1, dated 24.06.2004, and disposed of the writ petition with a direction to respondent No.2 to issue notice of hearing to the petitioner as well as respondent No.4 within four weeks and continued the petitioner as fair price shop dealer.

14. It is further averred that it is a fact that after issuing notice to both parties, respondent No.2 has upheld the orders of respondent No.1. Aggrieved by the same, the petitioner filed revision before respondent No.3. Again without waiting for the result in the revision, the petitioner approached this Court through W.P.No.1927 of 2007 and this Court disposed of the said writ petition directing respondent No3 to dispose of the application for interim relief expeditiously and preferably within a period of four weeks.

As per the orders of this Court the revision was finally disposed of on 24.07.2007 after following due procedure.

15. In reply to various grounds raised in the writ petition it is stated as under:

(i) It is not correct to say that the orders passed by respondent No.3 as illegal, improper, unjust and contrary to law. But the orders are passed after following due procedure.

(ii) It is a fact that all the candidates who have selected as fair price shop dealers were issued authorizations except the petitioner, as he was not selected as fair price shop dealer.

(iii) After hearing both the parties and perusing all the material available on records, the matter is decided and it was ordered for de novo selection by issuing fresh notification.

(iv) It is not correct that there is any ambiguity in selection process or any contusion in the selection. The 1st respondent issued a notification in Rc.B.492/2004 inviting applications for the appointment of fair price shop dealership of T.Gokulapadu Village, Krishnagiri Mandal on permanent basis. Interview were conducted on 15-06-2004 and the petitioner was selected tentatively among the candidates who have attended. Selected candidates list was published on the notice board on 18-06-2004. Later on after publication of the list it came to knowledge of the appointing authority that the petitioner is not residing in T.Gokulpadu village but residing in Veldurthy village which is against the conditions that the candidate should be resident of the Gram Panchayat in which the shop is located as detailed in condition 8 of G.O.Ms.No.53 Consumer Affairs, Food and Civil Supplies (CS.I) Department dated 06-10-2003. Hence, his candidature is not considered for appointment as fair price shop dealer. On verification of the electoral roll, his name is found in the electoral list in P.S.No.10 of Veldurthy village and Mandal and hence, the 1st

respondent did not consider his case.

(v) It is not correct to say that the 1st respondent yielded to pressure brought by the 4th respondent and issued authorization illegal in favour of the 4th respondent. The 1st respondent never issued orders in favour of the petitioner but issued in favour of the 4th respondent and accordingly authorization was issued in favour of the 4th respondent.

(vi) It is not correct to say that the 3rd respondent has executed his powers in adjudicating the issue before him and cancelled the 3rd respondent's selection. After perusal of the records, the 3rd respondent observed that confusion occurred in the matter and, therefore, the selection was cancelled with a direction to the 1st respondent for de novo selection.

(vii) It is not correct to say that the 3rd respondent failed to see that the grievance of the petition before him and passed orders against him. In fact, no orders were issued appointing the petitioner as fair price shop dealer.

(viii) It is not correct to say that the 3rd respondent erred in issuing further directions to the 1st respondent to conduct de novo selection by issue of fresh notification in accordance with the guidelines issued in G.O.Ms.No.53 CS Department dated 06-10-2003 within a period of four weeks. The 3rd respondent has exercised the powers vested with him as per the provisions

of the Andhra State Public Distribution System (Control) Order,2001.

(ix) It is not correct to say that the 3rd respondent failed to see that the 4th respondent did not challenge petitioner's selection as fair price shop dealer. The 4th respondent was selected as fair price shop dealer and, therefore, opposing the selection process by the 4th respondent does not arise. As there is chaos in selection process the entire process was cancelled and orders for de novo selection by fresh notification. There is no prejudice caused to the petitioner and he can participate in fresh process if he is qualified.

16. In the counter affidavit filed by respondent No.4 several averments had been specifically denied and specific stand had been taken that the Writ Petitioner is not at all eligible to the post since he is not a native of the village in question. Taking into consideration all the facts and circumstances, respondent No.3-revisional authority made the impugned order and hence the order as such cannot found fault.

17. No doubt there is some controversy whether the petitioner would satisfy the eligibility criteria, the writ petitioner asserting that he is a resident of the village and the contesting respondents disputing the same. This Court is not inclined to express any opinion relating to the said aspect. Let the Appointing Authority verify the said aspect also and in the event of the petitioner being a resident of the village, the petitioner also may apply and his case also may be considered along with the other applicants. However, it is brought to the notice of the Court that specific stand had been taken that the writ petitioner is not a

resident of the village. It is needless to say that the petitioner is at liberty to produce the other material to satisfy that he is a resident of the village before the competent authority.

18. With the above observations, the writ petition is disposed of. No order as to costs.

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P.S.NARAYANA, J.

Date: 30.11.2007.
Note: Issue copy
by 03.12.2007.
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